



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Hillsborough County Sheriff's Office

Complainant

v.

AFSCME Local 3657/Hillsborough County
Sheriff's Employees

Respondent

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Case No: G-0012-10

Decision No. 2006-091

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Hillsborough County Sheriff's Office (hereinafter "the County") filed an unfair labor practice complaint on February 16, 2006 alleging that the AFSCME Local 3657/Hillsborough County Sheriff's Employees (hereinafter "the Union") committed an unfair labor practice in violation of RSA 273-A:5 II (a), (d), and (g)¹, by demanding fact-finding at a time not provided for by statute. More specifically, the County states that after engaging in numerous good faith bargaining sessions for a successor contract, the parties participated in mediation on October 27, 2005 but were unable to reach an agreement. According to the County, the parties met again on December 5, 2005 at which time the Union indicated that it intended to proceed to fact-finding. The County alleges that, through its Chief Negotiator Thomas Flygare, the Union was advised that the County was prepared to continue negotiations and that fact finding was not an option at that time based upon the applicable statute. Nonetheless, as set forth in the complaint, the Union filed for the appointment of a fact-finder and has refused to negotiate with the County. The County maintains that the Union has failed to seek fact-finding in accordance with RSA 273-A:12. The County requests that the PELRB (1) issue and interim cease and desist order under RSA 273-A:6, III pending a hearing under Pub 304.04; (2) find the Union to have committed an unfair labor practice pursuant to RSA 273-A:5, II, (a), (d) and (g); (3) award fees and costs; and (4) grant such other relief as the board deems just and proper.

¹ During the course of the pre-hearing conference, counsel for the County amended the complaint by substituting the reference to subsection (f) with subsection (g).

The Union filed its answer denying the County's charge on March 16, 2006. According to the Union, it filed for fact-finding on or about November 29, 2005. The Union asserts that said filing was consistent with the applicable statute (RSA 273-A:12) and consistent with the time frame established by the County's filing of its budget submission date. According to the Union, the records of the Board reflect said date to be June 1st. It therefore maintains that its actions are in compliance with the provisions of RSA 273-A:12 and that the charge should be dismissed.

A pre-hearing conference before the undersigned hearing officer was conducted on May 31, 2006 at the PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the County: Carolyn M. Kirby, Esq.

For the Union: Joseph L. DeLorey, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

The parties stipulated to the following issue to be decided by the Board during the course of the pre-hearing conference:

Whether the Union violated RSA 273-A:5, II (a), (d) and/or (g) by refusing to negotiate with the County and demanding fact-finding outside the statutory time frame.

STIPULATIONS OF FACT

The parties stipulated to the following facts during the course of the pre-hearing conference:

1. Hillsborough County Sheriff (Sheriff) is a public employer within the meaning of RSA 273-A:1, X.
2. AFSCME Council 93, Local 3657 (Union) is the certified exclusive representative of certain employees of the Sheriff pursuant to a bargaining unit certification issued December 7, 1976, and later modified.
3. The Sheriff and the Union signed a collective bargaining agreement (CBA) dated July 1, 2003 through June 30, 2005 which is on file with the PELRB.
4. The Sheriff and the Union participated in good faith negotiations to reach a successor agreement through approximately 11 negotiations sessions occurring from October 2004 through December 2005.

5. The Sheriff and the Union participated in mediation on October 27, 2005 with the assistance of a neutral third party but were unable to reach agreement on a successor CBA.
6. The Sheriff and the Union met again on December 5, 2005 for negotiations.

WITNESSES

For the County:

1. Thomas Flygare, Esq., Chief Negotiator
2. Arthur Durette, Chief Deputy
3. Lieutenant Roger Matte

For the Union:

1. Steven Lyons, Union Representative
2. Ernest Castle, Chapter Chair

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Union's request for fact-finding, filed November 30, 2005
2. Union's request for fact-finding, filed December 1, 2005.

For the County:

None other than those marked above as "Joint."

For the Union:

1. County's budget submission date info, if on file with Board.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one (1) day.

DECISION

1. On or before **June 7, 2006**, the County shall disclose to the Union, and to the Board:
 - (a) the operative date(s) upon which it claims the Union's request for fact-finding is (or would be) due under RSA 273-A:12, and
 - (b) the basis for said claim.

2. The parties' representatives shall meet, or otherwise confer, on or before **June 8, 2006**, in attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. In the event that agreement is reached to submit the case by written submission, the parties shall forthwith file a joint statement indicating such agreement and include a proposed schedule for the parties' filings.

3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

June 13, 2006 @ 9:30 a.m.

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 1st day of June, 2006.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Carolyn M. Kirby, Esq.
Joseph L. DeLorey, Esq.